

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 11/1/2001)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of SIERRA PACIFIC POWER  
COMPANY for Approval of a Proposed  
Distribution Performance-Based Ratemaking  
Mechanism Supported By a Cost of Service  
Study.

Application 00-07-001  
(Filed July 3, 2000)

**OPINION DISMISSING APPLICATION**

**I. Summary**

This decision approves, in part, an all-party settlement of this proceeding, and otherwise dismisses the application of Sierra Pacific Power Company (Sierra Pacific) for Commission approval of a proposed Performance Based Ratemaking (PBR) mechanism. Because the all-party settlement of this proceeding defers virtually all important issues raised in Sierra Pacific's application until it files its next General Rate Case (GRC), and because Sierra Pacific will file that GRC in January 2002, there is no reason for the Commission to act on the proposed PBR at this time. We adopt those portions of the proposed settlement that defer issues to the GRC, and otherwise dismiss the remaining issues in the application.

**II. Background**

Sierra Pacific seeks Commission approval of a proposed PBR mechanism. Sierra Pacific conducts its retail electric business in California and Nevada. As a consequence of this Commission's order in Decision (D.) 97-12-093, all California electric utilities, including Sierra Pacific, were required to take several steps to

comply with Assembly Bill (AB) 1890, the California legislature's electric restructuring statute<sup>1</sup>:

Each of these [electric] companies is required to unbundle its rates into components that reflect its underlying cost for generation, transmission, distribution and public purpose programs. Where a company is seeking to recover any uneconomic cost of generation, it must reflect the resulting transition charges on its bills to all customers, track its collection of transition costs in a balancing account, undergo a market valuation process, surrender control of its jurisdictional transmission facilities to the Independent System Operator (ISO), freeze its rates at June 10, 1996 levels and provide a 10% rate reduction for residential and small commercial customers.<sup>2</sup>

In the same decision, the Commission directed Sierra Pacific to file a distribution PBR proposal no later than December 31, 1999.<sup>3</sup> While Sierra Pacific filed an application containing its PBR proposal on the due date, the Commission dismissed that application without prejudice because it was not supported by adequate detail.<sup>4</sup> Sierra Pacific filed a more detailed application on July 3, 2000 seeking Commission approval of its proposed PBR. It also submitted a cost of service study in order to set base rates.

The Utility Reform Network (TURN) and the Commission's Office of Ratepayer Advocates (ORA) protested Sierra Pacific's application. TURN and ORA contested, among other things, Sierra Pacific's inclusion of certain large categories of cost in rates, contending, principally, that the relevant costs should not be borne by ratepayers.

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<sup>1</sup> Stats. 1996, Ch. 854.

<sup>2</sup> D.97-12-093, 1997 Cal. PUC Lexis 1140, at \*2-3.

<sup>3</sup> *Id.*

<sup>4</sup> D.00-05-004, 2000 Cal. PUC Lexis 321. The Commission found that a subsequent Sierra filing would be deemed to have met the December 31, 1999 deadline.

On May 11, 2001, all parties to the proceeding filed a Joint Motion<sup>5</sup> seeking Commission approval of a proposed settlement of all issues in the case. Subsequent to that filing, the assigned Administrative Law Judge (ALJ) held public participation hearings (PPHs) at which she raised the possibility of dismissing this application in view of the fact that the proposed settlement deferred most of the big-ticket issues in this proceeding to Sierra Pacific's next GRC.

In response to this query, the parties filed briefs indicating whether they agreed that a dismissal would be proper. Both ORA and TURN supported a dismissal. Sierra Pacific was more equivocal, expressing concern over preserving the record in this proceeding for consideration in its GRC proceeding.

### **III. Discussion**

#### **A. Introduction**

So as not to lose the benefit of the settlement the parties have negotiated, we approve those portions of the Joint Settlement Proposal in which the parties agree to defer certain issues to the GRC. Because it is not at all clear that the remaining portions of the settlement are or ever will be relevant in view of the change in Sierra Pacific's plans and its imminent GRC filing, we reject all other portions of the Joint Settlement Proposal.

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<sup>5</sup> *Joint Motion of Sierra Pacific Power Company, Office of the Ratepayers Advocates (sic) and the Utility Reform Network to Adopt Settlement Agreement*, filed May 11, 2001 (Joint Motion), with *Joint Settlement Proposal of Sierra Pacific Power Company, Office of Ratepayer Advocates, and The Utility Reform Network Regarding All Issues in Application No. 00-07-001* (Joint Settlement Proposal) attached. The Joint Settlement Proposal appears as Appendix A to this decision.

The portions of the settlement we approve here meet the requirements for all-party settlements and settlements generally. The sole reason any party cites for opposing dismissal – Sierra Pacific’s concern about preserving the record of this proceeding for later use – is easily solved by invocation of Commission Rules 72 and 73. Thus, we approve the settlement in part and dismiss the case, conditioned on the parties taking up the issues they deferred in this case in Sierra Pacific’s next GRC. (Of course, to the extent Sierra Pacific does not raise the deferred issues in its GRC, there will be no need for compliance with the settlement agreement.)

### **B. Criteria for Approving All-Party Settlements**

We approve all-party settlements provided the following criteria are present *in addition to* criteria applicable to all settlements, which we discuss below. All-party settlements must meet the following requirements:

- *The settlement must command the unanimous sponsorship of all active parties to the proceeding.* Because TURN, ORA and Sierra Pacific are the only parties to this proceeding, this criterion plainly is met.
- *The sponsoring parties must be fairly representative of the affected interests.* The redistribution of rates Sierra Pacific proposes will affect its customers. ORA and TURN, in combination, represent the interests of those customers. ORA’s mandate is to advocate for all customers,<sup>6</sup> while TURN advocates on behalf of residential and small commercial customers.<sup>7</sup>
- *No term of the settlement may contravene statutory provisions or prior Commission decisions.* Since the portion of the settlement we approve

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<sup>6</sup> Cal. Pub. Util. Code § 309.5.

<sup>7</sup> See *Administrative Law Judge’s Ruling Regarding The Utility Reform Network’s Notice of Intent to Claim Compensation*, filed on October 26, 2000 in this proceeding, at 2 & n.2 (detailing TURN’s mandate to represent residential and small business customers).

merely defers issues in this proceeding to the next GRC, rather than disposing of any issue on the merits, the settlement meets this criterion.

- *The settlement must convey to the Commission sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.* Because the portion of the settlement we approve merely defers issues for future Commission consideration, the settlement causes no regulatory uncertainty.<sup>8</sup>

### **C. Criteria for Approving Settlements**

In addition to meeting the all-party settlement criteria detailed above, the settlement must meet the criteria applicable to all settlements, be they ones involving all parties or only a subset of the parties to the proceeding. These general settlement criteria provide that the settlement must be:

- *Reasonable in light of the whole record.* Because the settlement simply defers issues for later – and prompt – consideration, the settlement is reasonable in light of the whole record.
- *Consistent with law.* We are aware of no principle of law that precludes the deferral of issues to Sierra Pacific's January 2002 GRC filing.
- *In the public interest.* In our view, it serves the public interest to have issues dealt with in one place, rather than in piecemeal fashion. Since Sierra Pacific's plans to file its GRC are so imminent, the issues raised in this case will be handled promptly and efficiently in that proceeding.<sup>9</sup>

### **D. Affected Settlement Provisions**

We approve the portion of the parties' Joint Settlement Proposal deferring the following issues for future consideration, and otherwise reject the Joint Settlement Proposal:

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<sup>8</sup> Decision (D.) 92-12-019, 46 CPUC 2d 538, 550-51 (1992).

<sup>9</sup> *Id.*, 42 CPUC 2d at 551; Commission Rule 51.1(e).

- *Merger Goodwill and Costs.* This issue relates to whether Sierra Pacific may include costs of its 1999 merger with the Nevada Power Company as part of its costs of service.
- *Audit adjustments, Record-keeping.* This issue relates to whether Sierra Pacific should change its methods of keeping time records for allocating management time and administrative costs among regulated and unregulated activities.
- *Marginal Cost, Revenue Allocation and Rate Design Issues*
  - *Integrated Distribution Plant, Weighting of Coincident Peak (CP) and Non-Coincident Peak (NCP) Factors.* This issue relates to how to weigh Sierra Pacific's loads for purposes of developing its marginal cost revenue requirement.
  - *Calculation of Marginal Customer Costs (NCO vs. RECC).* This issue relates to whether marginal customer costs should be based only on new Sierra Pacific customers (as TURN contends) or on all customers (as Sierra Pacific contends).
  - *Overall Rate Design* – This issue requires Sierra Pacific to calculate “composite” vs. “simple” tier ratios as part of its next rate design.
- *Timing of Next Rate Filing.* This issue relates to the timing of Sierra Pacific's next GRC filing.<sup>10</sup>

#### **E. Appropriateness of Dismissal**

The only party resisting dismissal is Sierra Pacific, and it only does so out of a desire to ensure the record of this proceeding is preserved for consideration in future proceedings – both its rate increase application, A.01-06-041, and its imminent January 2002 GRC filing. However, there are other ways to ensure that the record of this proceeding is available for future use. Commission Rule 72 provides that the Commission may use the record of one Commission proceeding in another proceeding:

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<sup>10</sup> The Joint Settlement Proposal (Appendix A hereto) presents each of these issues in greater detail. We incorporate Appendix A in its entirety as if fully set forth herein.

If any matter contained in a document on file as a public record with the Commission is offered in evidence, unless directed otherwise by the presiding officer, such document need not be produced as an exhibit, but may be received in evidence by reference. . . .

In D.01-02-040, we applied Rule 72 to ensure that records of a dismissed telecommunications merger application could and would be available for use in future Commission proceedings.<sup>11</sup> Thus, there is no cause for Sierra Pacific's concern that dismissal of this proceeding will render the records unavailable for future use.

Rule 73 provides for the Commission to take official notice of facts to the same extent as courts take judicial notice. Thus, to the extent Rule 72 is inadequate to allay Sierra Pacific's concerns, Sierra Pacific has another vehicle in Rule 73 to ensure the record of this case is available in subsequent cases.

Because Sierra Pacific raises no other objection to dismissal, and the other parties support dismissal, we find it appropriate to dismiss remaining issues in this proceeding, conditioned on parties' compliance with those portions of the Joint Settlement Proposal discussed in Sections III(B)-(D) above.

### **Comment on Draft Decision**

The draft decision of Administrative Law Judge Thomas in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

### **Findings of Fact**

1. All parties have agreed to settle this case.

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<sup>11</sup> D.01-02-040, filed Feb. 8, 2001, 2001 Cal. PUC LEXIS 142, at \*10-13.

2. The parties sponsoring the Joint Settlement Proposal are fairly representative of the interests affected by this proceeding.
3. ORA and TURN agree that this application may be dismissed.
4. Sierra Pacific's sole reason for resisting dismissal relates to its desire to preserve the record of this proceeding for consideration in future proceedings.
5. The portions of the Joint Settlement Proposal we approve herein defer the affected issues for future consideration.
6. Sierra Pacific has pending before this Commission a rate increase application, A.01-06-041, and will file a new GRC in January 2002.

**Conclusions of Law**

1. The portions of the Joint Settlement Proposal we approve herein do not contravene the law.
2. Because in approving portions of the Joint Settlement Proposal, we provide for the Commission to address certain of Sierra Pacific's contentions in a future proceeding, the settlement creates no regulatory uncertainty.
3. The portions of the Joint Settlement Proposal we approve herein are reasonable in light of the entire record, consistent with law, and in the public interest.
4. The portions of the Settlement Proposal relating to the following issues should be approved:
  - Merger Goodwill and Cost;
  - Audit adjustments, Record-keeping;
  - Marginal Cost, Revenue Allocation and Rate Design Issues
    - Integrated Distribution Plant, Weighting of Coincident Peak (CP) and Non-Coincident Peak (NCP) Factors;
    - Calculation of Marginal Customer Costs (NCO vs. RECC);
    - Overall Rate Design – “Composite” vs. “simple” tier ratios; and



- Timing of Next Rate Filing.
5. The remaining portions of the Joint Settlement Proposal should be rejected.
  6. Rules 72 and 73 adequately provide for use of the record of this proceeding in future proceedings before this Commission.
  7. In view of Sierra Pacific's pending rate increase application, A.01-06-041, its intention to file a new GRC in January 2002, and the fact that the approved portion of the Joint Settlement Proposal simply defers issues settled here to the new GRC, the remaining issues in this application should be dismissed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Joint Motion of Sierra Pacific Power Company (Sierra Pacific), Office of [Ratepayer Advocates] (ORA), and The Utility Reform Network to Adopt Settlement Agreement is granted insofar as it relates to the following issues, and is otherwise rejected:

- Merger Goodwill and Costs;
- Audit adjustments, Record-keeping;
- Marginal Cost, Revenue Allocation and Rate Design Issues
  - Integrated Distribution Plant, Weighting of Coincident Peak (CP) and Non-Coincident Peak (NCP) Factors;
  - Calculation of Marginal Customer Costs (NCO vs. RECC);
  - Overall Rate Design – “Composite” vs. “simple” tier ratios; and
- Timing of Next Rate Filing.

2. Sierra Pacific shall file its next General Rate Case (GRC) in January 2002, and, to the extent it raises the bulleted issues in Ordering Paragraph 1 in the context of that GRC, shall be bound by the provisions of the Joint Settlement Proposal we approve, in part, in this decision.



3. Application 00-07-001 is dismissed.
4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.